IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 909 of 1990

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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SARVOTTAM CEMENT & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AC GANDHI for Petitioner
MRS REETA CHANDARANA, AGP for Respondent(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent : 3,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 24/08/2006

ORAL JUDGMENT

1. Mrs.Reeta Chandarana, learned Assistant Government Pleader seeks permission to place on record a compilation of documents comprising of

copies of various Government Resolutions in respect of incentive schemes for industrial units to be set up in developing areas; orders dated 24th February, 1984 whereby the petitioner was registered under the Central as well as State Subsidy Schemes; communication dated 23rd May, 1985 informing the petitioner regarding sanction of subsidy in its favour, both under the Central and the State Scheme; disbursement orders dated 14th October, 1986 and 28th October, 1986; minutes of the State Level Committee meeting No.125, held on 30th September, 1988 and disbursement order dated 29th September, 1989. The aforesaid documents being relevant for the purpose of adjudicating the controversy involved in the present petition, leave is granted. The aforesaid documents are taken on record and shall be treated as part of the record of the Special Civil Application.

2. By this petition under Article 226 of the Constitution of India, the writ petitioners challenge the Government Resolution dated 9th October, 1984 of the Government of Gujarat, Industries, Mines & Power Department, whereby it has been directed that the State Cash Subsidy should be restricted to the amounts to make the total subsidy (the Central as well as the State) admissible to the concerned eligible units under the State Subsidy Scheme in respect of assets created after 1st April, 1983. The petitioners

also seek direction against the respondents to pay the petitioner the balance amount of Rs.22 lakhs as subsidy at 25% of the fixed assets along with interest till the date of payment as well as to release the amount of Rs.2,32,193/- recovered from the petitioner No.1 (hereinafter referred to as the "petitioner Company").

3. Being attracted by various incentives offered by the State Government, as well as the Central Government, the petitioner No.1, a Company registered under the Companies Act, 1956 had established a mini-cement factory. The State Government, at the relevant time, had framed a scheme called the "State Subsidy Scheme for Industries" vide resolution dated 22nd December, 1977. Under the said Scheme, medium and large scale industries set up in Grade "C" Growth Centres were entitled to subsidy at the rate of 15% of the fixed assets or Rs.25 lakhs, whichever is less. Subsequently, by Government Resolution dated 27th August, 1980, the Government of Gujarat introduced a package of new incentives for promotion of industries in rural and backward areas, which provided that pioneer units would be eligible for incentives admissible at "C" Grade Growth Centres. It is an admitted position that the petitioner is registered as a pioneer unit and as such, is eligible for incentives admissible to "C" Grade Growth Centres. On 27th April, 1983, Union of

India announced subsidy of 10% under the Central Cash Subsidy Scheme for “C” Grade Growth Centres. As the petitioner came within the ambit of “C” Grade Growth Centres, the petitioner was also entitled to the benefit of Central Cash Subsidy under the said Scheme.

4. The petitioner had applied for registration for subsidy under both State as well as Central Scheme on 15th February, 1984 and was registered in respect of both the Schemes on 24th February, 1984. On 28th June, 1984, the petitioner applied for sanction of subsidy, both Central and State, which was duly sanctioned by the respondents and payments towards subsidy were received by the petitioner on 28th October, 1985 and 14th October, 1986. The grievance of the petitioner is that the respondent refused to make further disbursement on the ground that, by virtue of the impugned resolution dated 9th November, 1994, which was made effective from 1st April, 1983, the total subsidy State and Central could not exceed 15%, and that, central subsidy is to be adjusted as if the same has merged in the State subsidy. It is the case of the petitioner that, being a medium scale unit in the District of Mehsana, it is entitled to 15% State subsidy as per the notification dated 22nd December, 1977 read with the resolution dated 27th August, 1980, subject to a maximum of Rs.25 lakhs and that over and above the said amount, it is also

entitled to 10% subsidy of Central Government as per the press-note dated 27th April, 1983 in view of the fact that it is situated in the “C” Grade Growth Centre. It is the case of the petitioner that, based upon the representations made by the State Government and the Central Government, the petitioner had set up the industry and borrowed huge amounts for the said purpose. That, by virtue of the notification dated 9th November, 1994, the respondents are going back from their promise; that the petitioner having acted on the basis of the promise held out by the respondents, has changed its position, hence, the respondents are now estopped from denying the petitioner Company the benefits under both the Schemes separately.

5. It appears that, subsequently, the estimated project price and the cost had escalated and accordingly, the petitioner has claimed subsidy at 25% of Rs.22,75,000/-.

6. Being aggrieved by the Government Resolution dated 9th November, 1984, whereby both the State and Central subsidies are sought to be clubbed together, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

7. Heard Mr.Gandhi, learned advocate for the petitioner, Mrs.Chandarana, learned Assistant

Government Pleader for the respondents No.1 and 2 and Mr.J.M.Malkan, learned Assistant Solicitor General for the respondent No.3.

8. Learned Advocate Mr.Gandhi submitted that, acting upon the promise held out by the Government by virtue of the Government Resolution dated 22nd December, 1977 and 27th August, 1980, the petitioner had established the unit for manufacturing and production of Ordinary Port Land Cement. Moreover, pursuant to the press note dated 27th April, 1983 setting out the policy of the Union of India for grant of cash subsidy for “C” Grade Growth Centres, the petitioner which was a Small Scale Industry till then, got itself converted into a Medium Scale Industry and decided to increase its project cost. For this purpose, the petitioner had availed of loans from financial institutions and banks and arranged for additional funds to meet with the increased project cost. Relying upon the promises of the respondents that the petitioner would be eligible for 25% cash subsidy, the petitioner had changed its position by investing huge amounts and creating further liabilities. It was submitted that, pursuant to its registration, cash subsidy had been sanctioned at 15% under the State scheme and 10% under the Central scheme and disbursement was duly made as per the eligibility under both the Schemes. However, subsequently, the Government

has come out with the impugned Government Resolution dated 9th November, 1984 restricting the total subsidy, both Central and State, to the amount that the said unit would be eligible under the State Subsidy Scheme. Therefore, the respondents have restricted the total subsidy to 15% instead of the 25%, to which the petitioner is legally entitled.

9. It is pointed out that, even after the issuance of the impugned Government Resolution, the respondents had continued to disburse the subsidy as per the sanction order issued in its favour. However, subsequently, vide communication dated 29th September, 1989, the petitioner has been informed that the disbursement of Rs.3,31,752/- under the Central Cash Subsidy Scheme would be paid to the petitioner only after the excess amount of Rs.2,32,193/- paid to the petitioner under the State Subsidy Scheme is recovered.

10. It was submitted that initially, by virtue of the State and Central Cash Subsidy Schemes, the respective Governments have held out promises that the petitioner would be entitled to subsidy at the rates specified in both the Schemes, acting upon which, the petitioner had established an industry and expended a considerable amount after the same. That the respondents had sanctioned cash subsidy in

accordance with the respective Government Resolutions. It was submitted that once the Government had sanctioned a particular amount, they are estopped from changing the same subsequently. It was urged that the subsidy had been sanctioned in 1985 on the basis of 15% and 10% in respect of State Cash Subsidy and Central Cash Subsidy respectively. Not only that, respondents have also acted upon the said sanction orders and disbursed the amounts granted. It was contended that once the amount has been disbursed on the basis of valid sanction orders, the respondents cannot subsequently change their stand and seek to recover the same.

11. In support of his submissions, the learned advocate relied upon the following decisions:

(i) The decision of the Apex Court in the case of *State of Orissa v. Mangalam Timber Products Ltd.*, AIR 2004 SC 297, was relied upon, with special reference to paragraph No.4 of the said decision, which reads as under:

> *"4. Having heard the learned counsel for the parties, we are satisfied that no case is made out for interference with the judgment of the High Court. Before the High Court, the principal plea of the respondent was that there was no contract in writing and, therefore, the applicability of the principle of promissory estoppel was*

> *not established. The High Court has rightly discarded this plea. To attract the applicability of the principle of estoppel it is not necessary that there must be a contract in writing entered into between the parties. We are not satisfied even prima facie that it was a case of an error committed by the State Government of which it was not aware. The State of Orissa should have, while holding out the representation, taken into consideration the fact who will have to do replantation and that the permission of the Government of India would be needed for the purpose. The State cannot take advantage of its own omission. The State Government having persuaded the respondent to establish an industry and respondent having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of raw material fixed by the State Government and supplied, the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of the respondent and effective from a back date and place the respondent in a situation which it will not be able to resolve. The respondent could not have revised their price from a back date and recovered it from innumerable consumers to whom their finished products were supplied at a fixed price."*

It was submitted that, in the circumstances, the respondents were barred by the principle of promissory estoppel from changing the terms of the sanction order and reducing the amount on the basis of the impugned notification.

(ii)The decision of the Apex Court in the case of *M.P.Sugar Mills v. State of U.P.*, AIR 1979 SC 621, was cited wherein the doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. It has been held that where the Government makes a promise knowing or intending that it would be acted upon by the promisee, and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. The Court also held that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. It was also held that the Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency, nor can the Government claim to be the sole judge of its liability and repudiate it on an ex-parte appraisement of the circumstances.

It was contended that the Government having held out a promise to the petitioner and the petitioner having acted upon the same and altered its position, the Government was bound by its promise and could not repudiate the same.

12. It was submitted that, by the impugned Government Resolution, the respondents had sought to retrospectively restrict the combined subsidy under the Central and the State Schemes to the amount admissible to an eligible unit under the State Subsidy Scheme. It was submitted that the impugned Government Resolution which takes away the right already vested in the petitioner for grant of subsidy as per the orders of sanction, is required to be quashed and set aside, or in the alternative, it may be held that the same may not be given effect to in case of the petitioner. It was prayed that the balance amount under the Scheme at the rate of 15% under the State Scheme and 10% under the Central Scheme be directed to be paid to the petitioner.

13. Mrs.Chandarana, learned Assistant Government Pleader opposed the petition and supported the action taken by the respondents. Learned Assistant Government Pleader referred to and relied upon the affidavit-in-reply filed on behalf of the respondent No.2, and submitted

that the action taken by the State Government of restricting the amount of cash subsidy to 15% was just, legal and proper.

14.Mr.J.M.Malkan, learned Assistant Solicitor General for the respondent No.3 was not in a position to make any submissions on the merit of the matter, nor could he clarify the stand of the Central Government in the matter. However, with a view to assist the Court, the learned Counsel drew attention of the Court to the provisions of Section 15 of the Code of Civil Procedure, 1908 which provides that every suit shall be instituted in the Court of the lowest grade competent to try it, to submit that the relief prayed for vide paragraph 31(b) and (c) tantamount to seeking a money decree, which would require investigation and examination of bundle of facts, hence, the petition is not maintainable. As can be seen from the relief clause, the principal prayer in the petition challenges the Notification dated 9th November, 1984. Besides, the petition does not involve any disputed questions of fact, in the circumstances, the aforesaid submission made by the learned Counsel being thoroughly irrelevant, deserves to be rejected.

15.Before entering into the merits of the matter, it would be necessary to examine the various Schemes floated by the State Government for cash

subsidy for industrial units. Initially, by Government Resolution dated 22nd December, 1977, the State Government introduced a Scheme titled “The State Cash Subsidy Scheme for Industries”. The operative period of the said Scheme was for a period of five years from 1st November, 1977. The Scheme was applicable to “developing areas” indicated in Annexure “I” to the said resolution. The “developing areas” consist of zones and growth centres, as defined in the Annexure “I”. Three types of growth centres have been defined under the Scheme, viz. Grade “A”, Grade “B” and Grade “C”. Clause (e) of the Scheme, which provides for “Cash Subsidy”, specifies the rates at which cash subsidy would be available to industries situated in different zones. For the purpose of the present petition, we are concerned with industries situated in “C” Grade Growth Centres for which subsidy is available at the rate of 15% of the fixed assets or Rs.25 lakhs whichever is less.

16. By a Government Resolution dated 27th August, 1980, the Government announced a scheme of sales tax incentives with effect from 1st June, 1980 for a period of five years i.e. upto 31st May, 1985. The said scheme was titled “The New Sales Tax Incentive Scheme for Industries.” The said scheme being primarily a sales tax incentive scheme would not have much relevance insofar as cash subsidy is concerned but for the fact that

under clause (7) of the said Scheme, provision has been made for special incentives for "pioneer units". Clause (7) insofar as the same is relevant for the purpose of the present petition reads as under :

> *"Recognizing the need for some special incentive for large industrial units going to a completely new location in backward areas so as to compensate for extra economic burden / handicaps involved to such Pioneer Units, Government is pleased to direct that such Units will be eligible for incentives admissible at a "C" Grade Growth Centre."*

It appears that the petitioner being a "Pioneer Unit" as envisaged under the aforesaid scheme was, therefore, eligible to cash subsidy under the Government Resolution dated 22nd December, 1977 at the rate admissible at "C" Grade Growth Centres, namely at the rate of 15% of the fixed assets.

17. As the operative period of the Government Resolution dated 22nd December, 1977 was to expire on 31st October, 1982 and under the provisions of the said Scheme, only fixed assets created during the operative period of the Scheme were eligible for Cash Subsidy, the State Government vide resolution dated 15th October, 1982 decided that those Industrial Units which

have taken the steps enumerated therein before 31st October, 1982, would be eligible to receive full subsidy, provided they complete the creation of all assets before 31st October, 1983. Subsequently, by a resolution dated 27th March, 1984, the Government provided for certain relaxations in case of those units who had not been able to complete creation of all assets before 31st October, 1983 on account of certain genuine difficulties. To enable such units to retain their eligibility for subsidy, the Government had decided that such units will be eligible for subsidy on the assets created by them till 31.10.1983 subject to the condition that only those units which have taken effective steps as per G.R. dated 15.10.1982 and have been sanctioned subsidy thereunder will be eligible for this relaxation. In such cases, 15% of the amount of the subsidy to which the Industrial Unit would be entitled would be disbursed after the commencement of production as usual. It appears that even thereafter the period has been extended till 1986.

18. By a press-note dated 27th April, 1983, the Government of India, Ministry of Industries, Department of Industrial Development, declared certain incentives for setting up industries in No Industries Districts/Backward Areas. Under the said Scheme, for the first time, Central subsidy was introduced for category “C” areas

which was so far eligible only for concessional finance. The said Scheme provided for a subsidy of 10% subject to maximum of Rs.10 lakhs in case of category “C” areas. Accordingly, those units situated in “C” Grade Growth Centres became eligible for central investment subsidy of 10% of its fixed assets.

19. By the impugned Government Resolution dated 9th November, 1984, the State Government after considering the Government Resolutions referred to hereinabove as well as the Government of India, Ministry of Industry, Press Note dated 27th April, 1983, noted that the Government of India had for the first time extended central subsidy with effect from 1st April, 1983 to the category “C” areas under the Central Subsidy Scheme announced on 17th April, 1983. The category “C” areas in respect of Gujarat are districts Amreli, Banaskantha, Bhavnagar, Junagadh, Kutch, Mehsana and Sabarkantha. It was further noted that under the previous scheme as well as under Government Resolution dated 15th October, 1982, the eligible areas in these districts were entitled to State subsidy at the specified rates; that since the object of the State subsidy was to supplement the Central subsidy in eligible areas, the question of reducing the quantum of State subsidy was under consideration in respect of those areas which have for the first time become eligible for

central subsidy from 1-4-1983. The State had, therefore, vide letter dated 28th September, 1983 issued instructions that the State subsidy should be restricted in each case to the amount to make up the total subsidy (the Central as well as State) admissible to the concerned eligible units under the State subsidy scheme in respect of assets created after 1st April, 1983. The said instructions were reiterated in the said Government Resolution and the said order was given retrospective effect from 1st April, 1983.

20. It appears that the petitioner applied for registration under both the State and the Central Subsidy Schemes on 15th February, 1984 and was registered under both the Schemes on 24th February, 1984. The petitioner had not annexed the aforesaid Certificates of Registration, therefore, the learned Assistant Government Pleader had been asked to place copies of the same on record. Accordingly, copies of the orders of registration under both the Schemes were placed on record. It may be pertinent to note that, under the said orders, the petitioner has been registered under the “Capital Investment” Subsidy Scheme 1983” which was introduced by the Government Resolution dated 19th August, 1983.

21. The petitioner having fulfilled all the

conditions necessary for registration as a Pioneer Unit, was registered as such, initially on a provisional basis on 24th April, 1984 and thereafter, permanently by order dated 4th June, 1986. Though the petitioner was registered under the Government Resolution dated 19th August, 1983, it appears that the petitioner represented to the State Government that the petitioner being a Pioneer Unit be granted benefits under the earlier Scheme. It appears that the petitioner being a Pioneer Unit was entitled to the incentives admissible at a "C" Grade Grown Centre during the operative period of the Scheme introduced by the Government Resolution dated 27th July, 1980. Accordingly, the petitioner was entitled to subsidy at the rate of 15% of fixed assets as State Government Subsidy as well as 10% cash subsidy under the Central Subsidy Scheme, which was introduced with effect from 1st April, 1983. However, vide impugned Government Resolution dated 19th November, 1984, the State Government gave effect to a policy decision whereby it decided to restrict the amount of subsidy in each case falling under category "C" areas, whereby the total of both Central and State subsidy would be equal to the amount of subsidy that the eligible unit would be entitled under the State Scheme. In other words, the sum total of subsidy was limited to the amount admissible under the State Subsidy Scheme.

22. It appears that, subsequent to its registration as a Pioneer Unit as well as under both the State as well as Central Subsidy Schemes, the petitioner applied for sanction of subsidy under both the Schemes on 28th June, 1984.

23. By a communication dated 23rd May, 1985, the Member Secretary, State Level Committee informed the petitioner that the said Committee had in its 92nd meeting held on 16th April, 1985 sanctioned a State Subsidy of Rs.10,22,925/- and Central Subsidy of Rs.5,72,535/- to the petitioner's unit. The fixed capital investment for the unit under the Central Scheme was Rs.57,25,349/- and under the State Scheme was Rs.68,19,500/-. On the basis of the aforesaid fixed capital, investment subsidy had been determined at the aforesaid amounts. It appears that while sanctioning subsidy as aforesaid, the State Level Committee had failed to take note of the Government Resolution dated 19th November, 1984 restricting the total subsidy to the amount admissible under the State Scheme.

24. Pursuant to the aforesaid sanction order, it appears that a total amount of Rs.11.37 lakhs was disbursed towards subsidy on 28.10.1985 and 14.10.1986. However, thereafter, the respondents refused to make subsequent disbursement under the said order. It is the

case of the petitioner that it was verbally told that by virtue of the Government Resolution dated 19th November, 1984, effective from 01st April, 1983, the total subsidy cannot be more than 15% and that, the Central Subsidy had to be adjusted as having merged in it. It appears that the petitioner made several representations to the respondents for disbursement of the remaining amount, but to no avail.

25. By a communication dated 1st September, 1988, the petitioner was informed that its unit had been sanctioned and disbursed State / Central Subsidy in accordance with the relevant orders of the Government, by the Industries Commissioner and therefore, the petitioner's unit was not eligible for any more State / Central Subsidy. By an order dated 29th September, 1989, permission was granted by the Joint Commissioner of Industries to disburse an amount of Rs.3,31,752/- as Central Subsidy. However, by a communication dated 29th September, 1989, a copy of which was endorsed to the petitioner, the Joint Industries Commissioner informed the District Manager, District Industries Centre, Mehsana that permission had been granted to disburse an amount of Rs.3,31,752/- to the petitioner under the Central Subsidy Scheme, however, the petitioner had been paid an amount of Rs.2,32,193/- in excess of its entitlement under the State

Scheme, hence, the amount of Central Subsidy be paid only after recovery of the aforesaid amount under the State Subsidy Scheme. An endorsement to that effect is also made in the aforesaid disbursement order dated 29th September, 1989. It appears that the petitioner has repaid the amount under the State Subsidy "under protest", and availed of the amount under the Central Subsidy.

26. As is apparent from the facts recorded above, subsidy under both the Schemes was sanctioned in favour of the petitioner on 23rd May, 1985. On the said date, the Government Resolution dated 19th November, 1984 was very much in existence and in force. Hence, while sanctioning subsidy, the aforesaid Government Resolution dated 19th November, 1984 was required to be kept in view, which appears to have been over-looked while sanctioning subsidy on 23.5.1985. Therefore, subsequently when the same has come to the notice of the authorities, appropriate measures have been taken to rectify the said error committed while sanctioning the subsidy.

27. At this stage, it may be pertinent to note that, in the order dated 23rd May, 1985, whereby subsidy is sanctioned, it is specifically stated that the same is subject to the terms and conditions of the Scheme. The Government Resolution dated 9th November, 1984 also forms

part of the Scheme, hence, the said order was also subject to the said Government Resolution. In the circumstances, no fault can be found in the action of the respondents in applying the provisions of the said Government Resolution while disbursing subsidy under the Scheme. Insofar as the validity of the impugned Government Resolution dated 9th November, 1984 is concerned, it cannot be said that the same is beyond the power and authority of the State Government. Grant of subsidy being a creature of the Scheme is subject to the Scheme. In this context, it may be relevant to take note of Clause (g) of the Government of Gujarat, Resolution dated 22nd December, 1977, under which Cash Subsidy has been granted to the petitioner, which provides for "eligibility" and reads thus:

> "[g] ***Eligibility*** *:*
>
> *New Industrial units engaged in manufacture of items listed in Annexure III are eligible to claim subsidy, according to the scale prescribed in (e) above, provided such industrial units are located in areas specified in Annexure I. Government may review this list from time to time and remove, amend or add any item from the said list. Similarly, Government may review the scale of subsidy for any industry. Government may also review the Growth*

Centres given in Annexure II from time to time. In short, these incentives are given under the discretionary powers of the State Government enforceable in a Court of Law."

Thus, the Scheme itself provides for review of the scale of subsidy for any industry. Accordingly, the State Government has vide the impugned Government Resolution reviewed the scale of subsidy admissible to units which are also eligible to subsidy under the Central Scheme.

28. As regards the retrospective effect of the impugned Government Resolution, it is apparent that insofar as the facts of the present case are concerned, subsidy has been sanctioned in favour of the petitioner in May 1985. At the relevant time, the impugned Government Resolution was already in existence and the petitioner is deemed to have been aware of the same. It may be that the petitioner may have created assets prior to the date of the impugned notification, however, nothing has been brought on record to show that the petitioner has in fact created assets prior to the said date. Even in case the petitioner may have created assets prior to the said date of the impugned notification, the petitioner cannot claim subsidy under both the Schemes *dehors* the impugned notification as a matter of right. It

is a settled legal position that cash subsidy is a concession granted by the State Government and no one can claim it as a matter of right.

29. As regards the invocation of the doctrine of promissory estoppel, the same has to be supported by relevant facts. In the present case, no precise data has been furnished by the petitioner in support of its plea. Except for bald averments that the petitioner has established the industry on the basis of the promise held out by the respondents, no specific facts are stated as to when exactly was the industry established; or as to when the fixed assets were created. The petitioner has neither bothered to place on record the order of registration, nor the order sanctioning subsidy. The petition is bereft of basic facts necessary for making out a case to substantiate the plea of promissory estoppel. In the circumstances, on the basis of the vague averments made in the petition, the claim of the petitioner cannot be sustained.

30. Besides, as can be seen from a reading of the Scheme as a whole, the same has been framed by the State Government in public interest and in the interest of industrial development for disbursement of subsidy for industrial units which are set up in developing areas. While framing the Scheme of 1977, the State Government

must have considered all relevant aspects before fixing subsidy at 15% of the fixed assets or Rs.25 lakhs whichever is less in respect of “C” Grade Growth Centres. At the relevant time, when the said Scheme was framed, the Central Subsidy Scheme was not made applicable to “C” Grade Growth Centres, consequently the amount of subsidy available under the said Scheme could not have been taken into consideration while determining the rate of subsidy in respect of “C” Grade Growth Centres. Subsequently, on account of application of the Central Subsidy Scheme, the total subsidy made available to industrial units situated in “C” Grade Growth Centres increased to 25%, which was beyond the limit fixed by the State Government. In the circumstances, the State authorities in their wisdom have thought it fit to revise the State Scheme so as to limit the combined subsidy payable to a unit situated in the “C” Grade Growth Centres to 15%. By virtue of the impugned Government Resolution dated 9th November, 1984, the State government has given effect to the aforesaid policy decision and limited the extent of subsidy to 15% inclusive of both State as well as Central Subsidy. The impugned Government Resolution, therefore, merely lays down a policy decision of the State Government, which is entirely within the domain of the State Government. This being a fiscal policy of the State Government, this Court would

not interfere with the same, more so when the petitioner, on facts, has not established any case for invoking the doctrine of promissory estoppel.

31. Insofar as the contention regarding the applicability of the doctrine of promissory estoppel is concerned, it is settled legal position that promissory estoppel has not only to be pleaded but also has to be established. It is only if a plea of promissory estoppel supported by factual particulars is put forth that the other side has an opportunity to answer the same. If we look at the averments made in the petition, except for vague averments to the effect that the petitioner has established the industry on the basis of the promise held out by the respondents, no factual particulars to establish the same are furnished. There are no factual averments as regards the period during which the fixed assets were created; nor the break up of the assets created before the Central Subsidy Scheme was announced and those created thereafter. If it is the case of the petitioner that it was induced by the Central Subsidy Scheme to create further assets, the same should be specifically stated with factual particulars. Nothing is brought on record, to point out with exactitude as to when the petitioner became entitled to subsidy under the said Schemes, whether prior to or after the date

of the impugned Government Resolution. In fact, the petitioners have failed to mentioned even the date of the orders sanctioning subsidy. In absence of even these basic facts, the plea of promissory estoppel is misconceived.

32. The facts of the present case are not analogous to the facts of the decisions rendered by the Apex Court in *M.P.Sugar Mills* (supra) and *State of Orissa v. Mangalam Timber Products Ltd.* (supra), upon which reliance has been placed on behalf of the petitioner. Insofar as the first case (M.P. Sugar Mills case) is concerned, the facts were totally different. In the correspondence exchanged between the State and the petitioners therein, it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years. Subsequently, when the State sought to levy sales tax on the said industry, it was held by the Supreme Court that the State was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry. In the second case (Mangalam Timber Products Ltd.), on the representation made by the State of Orissa as contained in their Industrial Policy of the years 1980 and 1983, the respondent therein was persuaded to establish its industry in the State of Orissa. The State Government

thereafter proposed revision of certain terms which resulted in revision of rate of royalty and the method of stack measurement, adversely to the interest of the respondent. On those facts, the Supreme Court held that the State Government having persuaded the respondent to establish an industry and the respondent having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of the raw material fixed by the State Government and supplied, the State Government cannot be permitted to revise the terms of supply of raw material adversely to the interest of the respondent and effective from back date and place the respodnnet in a situation which it will not be able to resolve. Hence, the aforesaid decisions do not support the case of the petitioner.

33. The Supreme Court in the case of *Kasinka Trading v. Union of India*, (1995) 1 SCC 274 wherein the withdrawal of a time-bound Notification for import of PVC resin issued in exercise of powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 was subject matter of challenge, has laid down that, to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party

invoking the doctrine. The doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court, while considering the applicability of the doctrine.

34. The Apex Court held that withdrawal of a concession in public interest is a matter of policy and the courts would not bind the Government to its policy for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the “public interest”. The Courts, do not interfere with the fiscal policy where the State Government acts in “public interest” and neither any fraud or lack of bonafides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilization of finances and to act in public interest while issuing or modifying or withdrawing an exemption Notification under Section 25(1) of the Act.

35. Though the aforesaid decision was rendered in the context of exemption Notification under section 25(1) of the Customs Act, the principles

stated therein would apply with equal force to an incentive scheme framed by the State Government, which is also in the form of a concession. In the circumstances, the plea of promissory estoppel, in the facts of the present case, does not merit acceptance.

36. The Apex Court has, in the case of State of *Rajasthan v. J.K.Udaypur Udyog Ltd.*, (2004)7 SCC 673, held that, the right to enjoy benefits of a concession is defeasible and, unless barred by principle of estoppel, can be withdrawn in exercise of the very power under which it was granted. It has been held that the recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. The Court held that, what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle itself is subject to the considerations of equity and public interest. This Court is of the view that the same principle would be applicable in the case of grant or non-grant of subsidy, which is also, in the nature of a concession. Thus, the State Government is empowered to change its policy in respect of concessions granted by it, subject to considerations of equity and public interest. The impugned Government Resolution having been

issued to effectuate the policy decision of the State Government and no case on the ground of equity having been made out, there cannot be said to be any infirmity in the impugned Government Resolution dated 9th November, 1984.

37. Besides, the petitioner has not been able to make out any case for applicability of the principles of promissory estoppel, hence, no infirmity can be found in the impugned Government Resolution dated 19th November, 1994 in seeking to merge the amount of Central Subsidy with the State subsidy, thereby putting a limit to the subsidy admissible to a unit to the amount admissible under the State Scheme. Hence, the challenge to the same cannot be sustained.

38. For the foregoing reasons, the petition fails and is hereby rejected. The impugned Government Resolution dated 9th November, 1984 is upheld as being in consonance with the Scheme and the policy of the State Government. Consequently, the petitioner is not entitled to the other reliefs prayed for in the petition.

39. Rule is discharged. The parties shall bear their own costs.

[HARSHA DEVANI, J.]

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